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5 UNITED STATES DISTRICT COURT  
6 DISTRICT OF NEVADA  
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8 JOHN NEFF, ) 3:09-cv-00271-HDM-VPC  
9 Plaintiff, )  
10 vs. ) ORDER  
11 ELDON K. MCDANIEL, et al., )  
12 Defendants. )  
13

14 The court has considered the report and recommendation of the  
15 United States Magistrate Judge (#41) filed on August 27, 2010, in  
16 which the magistrate judge recommends that this court enter a  
17 screening order dismissing without prejudice some of the claims  
18 asserted by plaintiff in his first amended complaint (#37). No  
19 objections to the report and recommendation have been filed and the  
20 time for doing so has expired. The court has considered the  
21 pleadings and memoranda of the parties and other relevant matters  
22 of record and has made a review and determination in accordance  
23 with the requirements of 28 U.S.C. § 636 and applicable case law,  
24 and good cause appearing, the court hereby

25 ADOPTS AND ACCEPTS in part and rejects in part the report and  
26 recommendation of the United States Magistrate Judge (#41).

The court adopts the magistrate judge's recommendation that plaintiff's Count I retaliation claim against defendants Neagle, 1 Bryant, and McDaniel, Count II due process claim against defendants 2 Brooks, Endel, and McDaniel, and Count II conditions of confinement 3 claim against defendant Bryant be allowed to proceed. The court 4 further adopts the magistrate judge's recommendation that 5 plaintiff's Count I right to access the courts claim against 6 defendant McDaniel and his Count II due process claim against 7 defendant Bryant be dismissed without prejudice. As to plaintiff's 8 Count II due process claim against defendant McDaniel, the court 9 concludes this claim should not be dismissed at this stage of the 10 proceeding.

11 Accordingly, it is ordered that:

12 1. The clerk shall file the plaintiff's first amended 13 complaint.

14 2. The complaint shall proceed on plaintiff's Count I 15 retaliation against defendants Neagle, Bryant, and McDaniel, Count 16 II due process claim against defendants Brooks, Endel, and 17 McDaniel, Count II conditions of confinement claim against 18 defendant Bryant, and Count II due process claim against defendant 19 McDaniel.

20 3. The plaintiff's Count I claim against defendant McDaniel 21 alleging violation of his right to access the courts and his Count 22 II claim against defendant Bryant alleging violation of his right 23 to due process are hereby dismissed without prejudice.

24 4. The clerk shall electronically serve a copy of this order, 25 along with a copy of plaintiff's first amended complaint, on the 26 Office of the Attorney General of the State of Nevada, attention

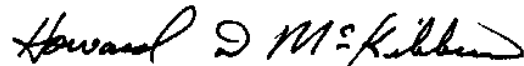
Pamela Sharp. The Attorney General shall file an answer or other response to the first amended complaint within thirty (30) days of the date of entry of this order.

5. If the Attorney General does not accept service of process for any named defendant(s), then plaintiff must file a motion identifying the unserved defendant(s), requesting issuance of summons for the unserved defendant(s), and specifying the full name(s) and address(es) of the unserved defendant(s).

6. Plaintiff's motion for summons on additional defendants (#38) is denied without prejudice as moot with leave to renew the motion should the Office of the Attorney General of the State of Nevada not accept service.

**IT IS SO ORDERED.**

DATED: This 27th day of September, 2010.



UNITED STATES DISTRICT JUDGE